Research Proposal Form of the Thesis Entitled

A CRITICAL STUDY OF THE RIGHTS OF THE LGBTQA+ COMMUNITY IN INDIA ESPECIALLY IN THE CONTEXT OF MARRIAGE AND ADOPTION: AN INDIAN PERSPECTIVE

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1.1. **Introduction**

The Indian history of the LGBTQA+ community is not just a story of rights denied and battles fought. It is a real life fights for seeking equal status in the society. The research is taken to understand the modern legal challenges for the marriage and adoption rights for the LGBTQA+ community. The community has adopted the very clear route to reach to their goal of Identity and equality.

- **The Pre-Colonial India: Fluidity and Acceptance**

In ancient Indian scripts, legends, and temple art it is those bodies which were considered elusive inception of strict gender role with non-binary forms of identity that transcended beyond the masculine and feminine duality. In the form of a deity, Ardhanarishvara (half man and half woman) represented these two masculine and feminine powers to be united. The way gender transformations and same-sex relations are portrayed in the narratives of Mahabharata and Ramayan calls for discussion, not mere mocking.[1]

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- **Colonial Era: Imported Morality and Criminalization**

However, the British colonization of India brought a colossal change in this trend. Crimes such as 'against the order of nature' that went up against Victorian morality, an inflexible understanding of both sexual action and social conduct. Thereafter, came the draconian “Section 377 of the Indian Penal Code, 1860' which criminalised and punished with imprisonment had to engaged in it.

An unwritten law dismantling the centuries-old native tolerance and condemning LGBTQ+ people to minutes of invisibility, silence, humiliation. Hijra was a community earlier respected and admired. And then came the pathologization and criminalization of homosexuals, transsexuals, etc., fear, stigma and violence became normalized in the lives of people who did not adhere to heteronormativity.[2]

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[1] *Aparna Hyanki, "Adoption by Same-Sex Couples: Still a Taboo?" (2024) 9(4) International Journal of Novel Research and Development 22.*

[2] *Divyansh Jain, "Adoption Rights of Live-in and Same-Sex Couples" (2024) 4(1) Indian Journal of Integrated Research in Law.*

- **Post-Independence India: Silence and Stigma**

Soon after India became independent in 1947, equality, dignity and non-discrimination were guaranteed under Articles 14, 15, and 21 of the Constitution. Still, most LGBTQ+ people lived on the fringes for centuries, with even less rights and protection. The law had no word for them, and the usual silences of custom settled on their heads. The state and the society continued to be indifferent towards the emotional, civil, religious rights of LGBTQ people — particularly in such intimate spheres as marriage or family.

- **Early Legal Resistance and Awakening (1990s – Early 2000s)**

As we entered the 1990s, legal activities and social mobilization began to take place. Challenges to the legality of Section 377 began in early 1990s with first from NGOs like the Naz Foundation and others. Grassroots movements were developing to create safe spaces and raising awareness among communities. But resistance from religious groups, political establishments, and orthodox sections of society persisted. The conversation had begun despite of the opposition. Media began having authentic queer representation and the courtrooms also became a site of hopeful resistance.[3]

- **The Turning Point: Navtej Johar v. Union of India (2018)**

In 2018, the Supreme Court of India decriminalized consensual same-sex relations in "Navtej Singh Johar v. Union of India," holding that Section 377 violated constitutional guarantees of dignity, privacy and equality — a truly historic moment for Indian democracy.

In his powerful concurrence, Justice D.Y. Chandrachud accepted that constitutional morality should prevail over social morality. The verdict was not just legal but emotional validation of the pain, invisibility, and injustice suffered by millions.

- **Marriage and Adoption: The Next Frontier**

Same-sex marriage and adoption rights are not yet recognized in the Indian law despite its decriminalization. Hundreds of personal laws govern marital unions among men and women, the Special Marriage Act and the Hindu Marriage Act being just two of those. In fact, the Juvenile Justice Act and Hindu Adoption and Maintenance Act enforcement prevent same-sex couples from adopting.

The Supreme Court in turn released A Policy Change Whose Time Has Come in 2023, which stopped short of making same-sex marriage legal across the land and instead referred policy change to Parliament. But the Court re-affirmed that queer people were entitled to the right to

[3] *Aarushi Tomar, "LGBTQ+ Community's Right to Marriage and Adoption: Need for Legislative Reforms" (2017) Indian Journal of Law, Polity and Administration*

live with dignity, without discrimination. When the decision was handed down, it had bittersweet consequences — hailed as a victory for simply having their existence affirmed by law but decried for falling short of real equality.[4]

Love, identity and the hope to be part of a portion — it is what all men desire, fundamentally. For the rights of the LGBTQA+ community in India, there was little to no existence, as far back as generations can go. Their dreams of friendship, partnership, marriage and family have been stifled and whispered behind closed doors.

A land that celebrated gender fluidity and accepted diverse expressions of love in mythology, art, culture was ripped apart during the colonial period: The example being India. In criminalizing the very notion of same-sex relationships, and in dichotomous demarcation by moral character so strict that it amounted to nothing more than simple judgement, queerness was made invisible. Unfortunately, this imposition went beyond the end of colonial rule.

Dignity for Everyone in India Image source: down-to-earth In India, last few years have been a significant stride toward recognizing the rights In India, homosexuality has been legalised by the 2018 Supreme Court judgement. In Navtej Singh Johar v. Union of India decriminalizing human right and life 'Everyone has the right to love and live with dignity. But, decriminalization isn't the same as tolerance any more than tolerance is a stand-in for equality.

Not only is access to marriage and adoption a legal void, it is an unacceptable denial of full citizenship in a country where marriage represents the cornerstone of social identity. It implies that their love means less, their families are not as important and they remain second-class citizens.[5]

In pursuit of the same, this research critically explores the socio-legal right of LGBTQA+ persons in India, particularly marriage and adoption which are fundamental aspects of human life being deprived unjustly till date. It considers not only the journey towards legal progress, but also situates it within a framework where emotion, culture, and human exclusion are at stake.

In this society, we ask: can a democracy built on equality still refuse to give some of its citizens the primarily of creating a family Are we prepared to deny the pleasures of love enjoyed by all, if the constitution assures dignity to one and all can love be so unkind as to trip over any reason but gender? There is a lesson to be learnt: this is not merely a legal question, but also a moral

[4]*Ruth Vanita, "Same-Sex Weddings, Hindu Traditions and Modern India" (2009) (93) Feminist Review.*
[5]*Saif Rasul Khan, Same Sex Relationship and Marriage in India: The Path Forward (Gauhati University, 2019).*

one. A plea for empathy, acknowledgment and the bravery to make space in our statutes for the myriad ways people express their love and live.

Still, the dialogue continues. At the same time, petitions, public debates and youth-led movements continue. Other states have also come up with such progressive measures of giving welfare schemes, identities to the transgendered. Even though marriage and parenthood the highest signifiers of social acceptance remains a distant dream for most queer couples.

A history of LGBTQIA+ rights in India: Threaded through acceptance, colonization, resistance & resilience once was a god in temples, later made a crime by foreign rulers and now is a recognition confined to court: this journey is far from finished. The same rights to love, protect and be treated as fully-fledged human beings.[6]

This title is not selected in a vacuum, but with intent, layering and tapping into the pressing need to deliberate upon probably one of the direst human rights challenges that still exist today **"A Critical Review of LGBTQA+ Rights in India, With a Focus on Marriage and Adoption from an Indian Point of View"** These are those who struggle to find a stake in the country they call home a community striving to be recognized, both emotionally and legally.

- ***Addressing a Historically Marginalized Community***

The first part of the title— **"The LGBTQA+ Community's Rights: A Critical Analysis"**— acknowledges that being an oppressed, legally unprotected and socially excluded community on Indian soil. Even as LGBTQA+ rights have started finding traction globally, the conversation in India has largely been restricted to urban parts of the country and where not prevailing mostly surrounds decriminalization. To understand the structural, constitutional and cultural dimensions of this exclusion it is necessary to deepen this almost critical analysis.

I am using the term "critical study" very deliberately to mean an in-depth, evaluative analysis: thinking above and beyond an introductory understanding. It implies not just a critique of today's laws but a reckoning with their inadequacy, their lack and yes, the societal prejudices on which they are grounded.[7]

- ***Focusing on Marriage and Adoption: Two Crucial Life Rights***

People keep putting out these laws to implement, but marriage and adoption are symbols of social legitimacy, emotional security, and personal fulfilment more than mere legal arrangements. Those rights are so basic that some heterosexual individuals consider them

[6]*Abhijit Iyer-Mitra, Shubhendu Anand, Pradosh Shetty & Ankit Bhuptani, "Legislation on Same-Sex Marriage and Adoption Rights" (2024) 1(1) Indian Foundation Report 9.*

[7]*Ratna Suman, "Accommodation of LGBT Rights Post Decriminalisation of Homosexuality in India" (2020) 81 Journal of Gender Studies.*

human rights, while forgetting who gets to be considered human and why. These life experiences yet remain either in abeyance or on tenterhooks for the LGBTQA+ community.

It notices that "Especially in the Context of Marriage and Adoption" is added in order to key into two specific painful and once omnipresent threatened areas where rights denial has long-term impact. And this argument about the first step of decriminalisation would lead more broadly to an understanding that equality etc, is really about being able to find it by sitting around a cradle together and marrying who you want.

Our counterpart, however, the stress of all this regress is more painful in Indian aspects where marriage is not treated as privacy contract (in the sense of Nietzsche) but a honour bound Socio- Culture institute which gets into play with legitimacy; religion and inheritance to grant life and rights given to everyone. Adoption is viewed as an act of equal parts compassion and fulfilment of parenthood. There is unconditional love and beauty in parent-child bonds. This means discrimination of rights — not human in the eyes of the law, and society.[8]

- ***Anchoring the Study in Indian Jurisprudence and Society***

Central to the design of research were the words “From an Indian Point of View”. Legal/Political/cultural relativism and LGBTQA+ Matters in India. The cultural, legal, political and religious complexities of India have deeply impacted Indian’s approach to the issues being discussed here. While Western countries volunteered themselves to change their existing legal framework either through legislative consensus or public referendums, in India, the judiciary is a beacon of light in securing rights based-recognition.

And at the same time, Indian family system and social structure along with religious traditions put a schism on normalcy and morality in your head. An international or model born of the West cannot, therefore, be imported lock stock and barrel. Whereas the Indian reality extends to discussions on constitutional interpretation, Supreme Court decisions, limitations within statute and grassroots realities of being queer in the boomtowns or the hinterland.[9]

- ***Bridging Law and Humanity***

The title serves as a link between the legal side and the human side of the problem. This issue is not just a constitutional or policy issue — this boils down to live humans living in fear, wanting to be accepted, and fighting to raise families. Gender has been defined as a social role, developed and often limited to simply male and female with other communities often being left

[8] *Saumya Anand, "A Step Towards Equality: Adoption and Parenting Rights for LGBTQ+ Individuals in India" (2024) 3(4) Journal of Research and Juridical Sciences.*

[9] *Navantara Ravichandran, "Legal Recognition of Same-Sex Relationships in India" (2014) Indian Law & Policy.*

out. This study of rights in that context is almost a moral duty— to illuminate how the law can and does make injustice normal or tool for healing

Introduction of marriage and adoption provides a larger platform to discuss about equality under article 14, non-discrimination under article 15, freedom of expression under article 19 and right to life and dignity under Article 21. The title is a critical one, attempts to address the law and human rights.

- ***Filling an Academic and Policy Gap***

Finally, naming the report is also relevant to a research/policy gap in India. Even as we have plenty of research around the lived experiences of being queer or trans, and numerous studies suggesting why this might impact health in various ways (I am not discussing these directly today), there are fewer exercises which map out what it actually means for family rights and the law if couples deal within a vacuum. This research is not only relevant in an academic sense but also has the potential to add to the ongoing legal discourse and legislation with respect to laws concerning personal laws, civil unions and adoption reforms.

The title is both informative and motivational. It is a clear sign of an unapologetic effort to provide justice, voice and dignity for a community that has been silenced by law, morality and the dictates of social hegemony. By choosing to do so, the researcher makes a promise to uplift those whose voices have been suppressed; wrestle with legal intransigence and dream of an India that can include many more people under its tent of love by constitutional design and societal volition.

1.2.Research Problem

Elsewhere in India, the LGBTQA+ community continues to be on the periphery of legal recognition, social acceptance and policy inclusion—especially with respect to their basic right towards marriage and adoption. No matter the ground-breaking step that decriminalisation of homosexuality was in “Navtej Singh Johar v. Union of India” (2018), queer persons are structurally left out to civil liberties that constitute a banal rite-of-passing for straight citizens.

Under contemporary family law frameworks in position like the Hindu Marriage Act, Specific Marriage Act and also (sharia-based) Muslim Personal Regulation, marriage continues to be stipulated as being an organization between humans of contrary genders, which has made subscribing their communications a foregone conclusion. The result is that survivors are left without the option to claim spousal benefits related to maintenance, inheritance, property division, medical consent or next of kin recognition for pension and legal spouses.

Furthermore, under both the secular and religious adoption laws, queer families are generally not considered due to language that enforces heteronormative marital categorisations or vague language which opens up potential avenues for same-sex couples to be discriminated against.[10]

In this way LGBTQA+ community are denied of marital and parental recognition their rights to spousal legal protections, joint tax benefits property and some medical capacity-based decision making powers. On the other hand, centres of adoption discriminate homosexual couples in practice as well since there are very few that allow it and without any valid reason many times reject a request for an application. Even in places where adoption is technically allowed by a single individual, though, queer adopters often find themselves on the receiving end of intrusive questioning, public criticism and institutional prejudice. The absence of mandatory training and sensitization for the legal professionals, judges, adoption counsellors also bolsters the structural impediments. It means that, until such time as the law is codified in comprehensive statutes (as opposed to on a case-by-case basis/internal circulars), queer parents raising kids have no clear legal status or protection; questions around guardianship, custody, succession and welfare are all left unregulated.

LGBTQA+ families being uncounted in the census and excluded from public policy makes them invisible, part of a larger issue where demographic identities are neither accepted on paper nor acknowledged while preparing legislation and welfare schemes. Queer partners are typically excluded from rights such as those for maternity and paternity leave, housing, disaster compensation, old-age pensions and insurance that pertain to the family due to government practices of ignoring their existence. Nor can same-sex couples in a relationship formally nominate their partners as dependents or legal heirs for specific state benefits, while official forms like an Aadhar/PAN health insurance again reinforce the exclusion. Under the current state of immigration and visa laws, same-sex marriages performed abroad are not legally accepted and LGBTQ binational couples exist in a kind of forced separation or live together in legal "no man's land."

Without the protection of laws, gays are distorted against their will into marriages because family and society persecute. Draconian police harassment, being thrown out on the streets by their landlords and domestic violence with absolutely no legal redress — if they share their lives with someone of the same sex. And the courts are, generally, still short on guidance when it comes to marital disputes, separation and property division that include a same-sex couple.

[10]*The Transgender Persons (Protection of Rights) Act, 2019, Parliament in the Seventieth Year of the Republic of India, p. 79.*

Furthermore, no legal provisions exist for divorce or alimony maintenance or alimony from homosexual unions in the event of separation rated. The unclarity in the Indian law about what terms to use to describe these relationships, have only increased confusion and legal not very accessibility.

Kids raised in LGBTQA+ homes too often face discrimination and bullying at school, and are legally invisible. Lesbian, gay and bisexual couples face a lack of access to services such as school admissions, benefits or parental recognition. Queer people are also segregated from utilizing assisted reproductive technologies (ART) and surrogacy laws bar or bottleneck access to health care on a guise of protecting "normal" families. Sperm banks, egg donors, and surrogacy clinics frequently turn away queer customers on moral grounds rather than medical ones. These biases are even more pronounced in rural spaces, where public opinion is lower and households treating queer parenting with either scepticism or hostility.

Political apathy compounds these legal and social issues. Queer marriage/adoption rights most glaringly remain an unaddressed subject in the manifestos of the major parties despite a growing presence of queer voices. Legislative reforms are often diluted or delayed because of powerful religious lobbies and moral conservatism for fear of backlash from their traditional voter bases. Even though courts have been more progressive in recent times, they remain oriented to wait for political will over questions of marriage equality, a process that effectively puts rights on hold while citizens sit it out. This is why they depend on PILs as a quick fix as there has been no comprehensive law-making.

It is even more difficult for queer people who come from a marginalized caste, tribal background or an economically weaker background where discrimination amounts to phenotypic markers and intersects with systemic poverty and the caste scenario. These are also the very same concerns that are often ignored by mainstream queer activism, which is largely urban centric.

Similarly, queer persons encounter institutional bias when applying for financial arrangements in the form of joint loans, concurrent property purchase or nominations under employment benefits. Not recognizing their legal spouses or family members can strip them of hospital visitation rights, medical consent in life-threatening emergencies, and even proper acknowledgment on death certificates or funeral rites. Law enforcement, as well, rarely sides with queer people in such instances of legal dispute; rather than help them, they harbour hostility towards and pass judgement on or flat-out ignore the needs of these individuals.

This includes a lot of content in both digital and traditional media that presents queer families in unfavourable, sensationalized ways (usually used to reinforce stereotypes and develop a moral panic about queer parenting). Queer family rights have been opposed on the grounds of cultural purity or divine law by religious institutions and community leaders, even though ancient traditions in India have historically documented gender and sexual diversity with greater openness. Additionally, a lack of mental health support for queer parents and their children may leave families at heightened risk for psychological distress and social isolation.

The fact of the matter is, schools that do not provide LGBTQ-inclusive sex ed or acknowledge family diversity marginalizes and stigmatizes too many kids from queer families, which results in bullying and social ostracism. Queer family law is almost completely ignored in compulsory legal education, which leaves the future judges, lawyers and administrators entirely unable to deal with these growing demands. This way, in this scenario can be added the dimension of LGBTQ+ assistance policies that never got true resources or state support, because they do not outrange a work about identity names and define family rights without such more encompassing construction. People are literally kept from the bedside of their dying partners, or denied survivor benefits, because nobody who follows those impulses has seen fit to write a law saying that they can be with one another in certain ways and call it good.

The underlying research problem is that queer people continue to be treated as second-class citizens through systematic legal relegation from full marital and parental rights, in spite of constitutional guarantees of equality, dignity, and non-discrimination. As a result of the continuing opacity in India's legal system it is forever outdated and some queer citizens are never rescued from the relegation to second-class citizenship, given merely symbolic rights but no credible structural protection. It is not only a denial in the legal sense, it represents a human rights disaster. And not just in legal texts, it is the problem of policy, social norms, bureaucracy and institutional practice such that the entire system renders queer love and family more or less illegitimate. When we live in a land of multi-cultural celebrations, we also need to possess the courage and spirit of recognizing multi-family configurations.

Members of the LGBTQA+ community across India, but in Gujarat as well, still fight to be heard legally and socially as they are unheard when it comes to matters of marriage and adoption. The Indian Supreme Court had decriminalised homosexual relations between two consenting adult persons, through its judgment of 2018 in Navtej Singh Johar vs Union of India

by declaring Section 377 of the Indian Penal Code void, but it did not confirm that it was legal for two individuals to marry each other or to adopt a child. While in Gujarat scenario the state machinery, polices and legal frameworks have largely remained mum on queer rights specially relating to family life. Such silence is dangerous, because it means we leave the queer citizen in a position without a precise legal protection, family rights do not exist, and social acceptance as well.

Others find it hard to imagine the people of Gujarat permitting same-sex marriage due to its culture being so conservative and remaining anchored on traditional family systems. The dominant socio-cultural norms, which are to a large extent intertwined with religious and caste identities frame marriage as a predominantly heterosexual reproductive-cum-social institution. Gujarat also requires queer folks to be invisible from the public eye, or pushes them into unholy matrimony with haters contributed by the local khap panchyat, and even makes you 'move' to major metros in search of safe spaces.

There is no scope of legal recognition of same-sex unions under any state or central law, so in Gujarat, LGBTQA+ persons cannot even avail basic spousal rights like inheritance claims, joint property ownership, claim to next-of-kin status in hospitals and protection under domestic violence laws. Even when queer couples cohabit informally, there are no official channels or grievance redressal mechanisms available to them from the local administration.

When it comes to adoption it is even more exclusive. Gujarat does not have any state level guidelines or progressive practices in its adoption authorities or shelter homes that cater to the needs of queer individuals. Current frameworks, which effectively prioritise heterosexual married couples have significant policy surplus costs by either outright rejecting most queer parents or subjecting them to a regime of scrutiny and delay. Even though Juvenile Justice Act permits single individuals to adopt, in reality queer people face discouragement or discriminatory treatment. Adoption counselors and Child Welfare Committees are generally not trained or sensitised to LGBTQA+ rights, in which case the issue of sexual orientation might be irrelevant.[11]

In rural Gujarat, which has low awareness about gender diversity, LGBTQA persons have to suffer the worst. Social boycott, persecution by local administration and family inflicted violence restrains a lot of people to come out. Transgender people as hijras and kinnars are

[11]*Deepshree Chauhan & Anshul Agrawal, "Security of Live-in Relationship" (2021) 4 International Journal of Law, Management and Humanities 122, 128.*

often marginalized within mainstream family structures and are almost never recognized a parents, adopting or fostered. As of now Gujarat has not fully amended its state welfare schemes in terms of queer families. The University of Maine System provides specific transgender healthcare benefits, while marriage and childcare rights among same-sex couples are not protected in state law even when one or both partners is transgender.

Even schools and lawyers in Gujarat are not sensitized. It is stated in an article named Family Law: An Overview of Different Lesbian, Gay and Bisexual Groups by Jane Scoular that LGBT community has not been well served for queer family law even though law colleges and judicial academies hardly include any courses or modules on LGBTQA+ rights. Therefore, many judges, lawyers, and police officers still apply their personal prejudice rather than constitutional principles when handling cases that involve queer families. Queer couples are not accepted as families under any housing schemes, ration card registration or public health benefits under the jurisdiction of public authorities in Gujarat including municipal corporations and panchayats.

Further, the absence of political interest towards the problem by the territory of Gujarat only worsens it. Gujarat is one of the few Indian states with no state-level programmes or measures to recognise family interests within LGBTQA+ individuals, as opposed to some other Indian States that have adopted resolutions or formulated LGBTQ+ policy frameworks. Queer rights are hardly the stuff of party-political manifestos, or even top the list in parliamentary debates. Consequently, queer people in Gujarat are stuck in a legal landscape that offers little solace from either civil society or the state.

This is a list of some of the challenges that queer parents and their children face in Gujarat, from school discrimination to emotional trauma. Children raised by same-sex couples still have legacy challenges without clear legal status and appreciable consequences for being denied admission or subjected to bullying. In Gujarat, for example, hospitals as well as government services refuse to regard same-sex partners as viable and legal caregivers (or indeed decision makers), which means during medical emergencies queer families are at high risk. Even in the grave, gay couples are not respected—causing unresolved successor disputes, funeral rights and mental torture.

There, the problem is a compound crisis — predominantly rooted in legal silence but bolstered by social prejudice, institutional ignorance, and political apathy: making family law an exclusive domain of heterosexual couples that deviate from gender binary leaves the LGBTQA+ community stripped of their rightful place. The denial of marriage and adoption

rights in Gujarat is not just a convergence of policy failure but an ethical failing of a democratic society built on the pillars of dignity, equality and justice for all. The underpinning intention of this research is to reprioritise the demands from within Gujarat to be heard and recognised nationally, in favour of Pan-Indian legal reforms, policy inclusions and social attention that would make sure no Queer Gujarati feels silenced, invisible or ostracised ever again.

1.3.Significance of the Study

This study is significant in that it fills a profound legal and social void This is because same-sex couples and transgender individuals are denied the right to form families, the opportunity of adoption procedures both legal and moral protection enjoyed by their married counterparts. Now, the LGBTQA+ community stand waiting for marriage certificates and baby pictures. The contradiction between constitutionally-guaranteed equality, dignity, and rights for everyone; on the one hand and the reality of oppression which queer individuals face especially in conservative parts such as Gujarat so far exclusion from legal frameworks controlling family life must be parsed.

Between constitutional ideals and ground-level truths, the study analyzes national laws and their application (or lack thereof) in Gujarat region. It corrects untruths commonly held by ignorant populations on an unseen or invisible level. Among them, why are LGBTQA+ rights always only half-decriminalized? It uncovers the interplay between law, society, politics, and freedom at personal level. The study endeavors to fill this gap with respect to law and society, politics and personal freedom. It also shows deficiencies in LGBTQA+ rights that are legally endorsed but stop short of decriminalization.

The research itself contributes to legal scholarship and public debate, as well it guides social justice advocacy. Specifically the study demonstrates the institutional biases, structural barriers, and cultural resistance faced by gay people in making families which are legally recognized as such. This work provides a window into legislative academia, policy debates and social justice campaigns It records the actual experiences that queer people must endure when trying to form families that are both legally and socially recognized.

The study also gains in significance by adding to current debates about marriage equality, inclusive adoption frameworks for families composed of same-sex partners, the existence of queer families in Indian law generally. It aims to provide informed recommendations for legislative reforms, judicial interpretation, and public policy adjustments and thereby to contribute fresh content to current debates in this field.

In so doing, it takes up a rights-based approach, considering members of the LGBTQA+ community as equal people before law and capable participants in emotionally rich family lives. That is to say, it sees LGBTQA+ rights not primarily as a subject requiring special treatment but as being part of the civil rights of equal citizens who should have full enjoyment in both legal and feelings dimensions when constructing families-- so they might belong legally together.

In a culturally conservative place like Gujarat, where national prejudice is often deepened by regional power sources and Coverture still exerts its coercive influence upon modern relations between the sexes, the study seeks to offer a socio-legal lens which takes account of local realities. It has the potential to become a force for change in law reform, academic research and public understanding — thus making a meaningful contribution towards broader problems of gender justice and family rights in India.[12]

1.4. Objectives of the Study

The present study is undertaken with the following key objectives:

1. **To critically examine the existing legal framework in India** regarding the rights of the LGBTQA+ community, particularly in the domains of marriage and adoption.
2. **To assess the constitutional guarantees** of equality, dignity, and non-discrimination and how they apply (or fail to apply) to the LGBTQA+ community in matters of family rights.
3. **To identify the legal and procedural barriers** faced by LGBTQA+ individuals and couples in India and Gujarat in obtaining legal recognition of their relationships and parental rights.
4. **To explore the societal, religious, and cultural factors** that influence public perception and institutional behaviour toward same-sex marriage and queer parenting in Gujarat.
5. **To evaluate judicial pronouncements** related to LGBTQA+ rights, with a focus on the Supreme Court and High Court decisions that affect marriage and adoption laws.

[12] *Yashmeet Sehrawat, "India's LGBTQ+ Community: The Right of Adoption" (2023) 2(3) International Journal of Human Rights Law Review.*

6. **To study the lived experiences of LGBTQA+ individuals in Gujarat**, especially those attempting to form families, raise children, or seek legal status for their partnerships.
7. **To highlight the gap between decriminalization and full legal equality**, particularly in family law, and examine the consequences of this gap on the daily lives of queer citizens.
8. **To suggest legal reforms, policy changes, and institutional mechanisms** necessary to ensure the full realization of marriage and adoption rights for LGBTQA+ persons in India.

1.5. Hypotheses of the Study

1. The legal framework in India inadequately protects the marriage and adoption rights of the LGBTQA+ community.
2. Constitutional provisions guaranteeing equality and dignity are not fully implemented in favour of LGBTQA+ individuals in family-related matters.
3. Social, religious, and cultural norms significantly hinder the acceptance and legal recognition of queer families in Gujarat.
4. The absence of specific legislation recognizing same-sex marriage and queer adoption creates legal uncertainty and social vulnerability for LGBTQA+ persons.
5. Judicial intervention and progressive policymaking can play a transformative role in securing equal family rights for the LGBTQA+ community in India.

1.6. Scope of the Study

- Study on LGBTQA+ community's legal rights regarding marriage and adoption.
- Study focusing on the legal analysis of LGBTQA+ community's social standing.
- To meet a study objective, the researcher employed an empirical method limited to Gujarat State.

1.7. Research Questions

1. What are the existing legal provisions in India regarding marriage and adoption for the LGBTQA+ community?
2. To what extent do Indian constitutional values of equality and dignity apply to LGBTQA+ individuals in matters of family law?

3. How do personal laws and civil laws in India restrict or exclude same-sex couples from marriage and adoption rights?
4. What are the major legal and procedural hurdles faced by LGBTQA+ individuals in Gujarat while seeking recognition of their relationships or families?
5. How has the judiciary interpreted and responded to the demand for same-sex marriage and adoption rights in India?
6. What are the social and cultural perceptions toward same-sex unions and queer parenting in Gujarat?
7. How do government institutions, such as adoption agencies and civil registration offices, treat LGBTQA+ individuals and couples?
8. What role does public policy (at state and national level) play in enabling or restricting family rights for the LGBTQA+ community?
9. Are the current legal reforms sufficient to ensure full citizenship and family rights for LGBTQA+ persons in Gujarat?
10. What recommendations can be made for legislative and policy reforms to ensure equality in marriage and adoption rights for the LGBTQA+ community?

1.8. Research Methodology

Additionally, the study, which is as a doctrinal research report that relies on qualitative data, also to some extent draws from secondary data sources. The research is fundamentally an examination of existing laws, court decisions, constitutional provisions, scholarly papers, books, official documents and reports, and other academic literature about the rights of the LGBTQA+ community in India. The focus of the study was marriage adoption rights for same-sex couples with particular reference to what material conditions might have been blamed as a cause behind such proceedings.

In so doing, the study explores in greater depth whether certain statutes of India--such as the Hindu Marriage Act, Special Marriage Act and Juvenile Justice (Care and Protection of children) Act, with all its accompanying regulations--are inclusive or exclusive toward LGBTQA+ persons. Cases tried by the Supreme Court and various High Courts of India are also Quite a few words retailer-reviewed, particularly those concerning same-sex relationships, human dignity and the right of an individual to his family.

Reports and bulletins that the Law Commission of India, the Ministry of Social Justice and Empowerment and other LGBTQ+ rights organizations have put out reveal how the lesbians, gay people (LGBTQA+ community in Gujarat is perceived by society in official policy documents. The research also benefited from help exists at legal databases, official web sites and discussions from various academic journals to back up its legal interpretation and argument.

In order to achieve the study's research objective, empirical research methodology has been introduced in addition to the general doctrinal research (Qian P. 2002). In the empirical research method this study mainly relied on questionnaires and other feedbacks to reflect the people's perspective. In getting to grips with empirical research, the researcher confined his research work only to the Gujarat region.

In this way, the research draws on both primary data collection and already existing secondary materials, in order to come to a comprehensive, critical and relativistic-ally accurate understanding of the legal status and emerging discourse about Marriage Adoption Rights for LGBTQA+ Identity Groups in both an Indian context as well as its particular manifestation within Gujarat.

1.9. Literature Review

A review of the literatures gives important and significant academic engagement with LGBTQA+ rights in India, mainly after the decriminalization of homosexuality. The few of the research articles contribute valuable insights into the not only legal but socio-legal evolutions through laws, rights, duties given under the Indian Constitution, laws and provisions related to Marriage and adoption for the LGBTQA+ community.

1. **Arvind Narrain (2020), ""The State, Sexuality, and the Law in India: The Right to Love"**

   Looking at how legal frameworks around same-sex sexualities emerge and develop, this article's objective is to ascertain the intricate ties between Indian state-forms and same-sex desire that renders it criminalized. According to Narrain, although the Navtej Johar judgment decriminalized same-sex relationships, the non-recognition of same-

sex marriage and family formation from a legal perspective further otherizes LGBTQA+ persons.[13]

2. **Dipika Jain (2021), "Marriage Equality in India: Reading Constitutional Morality into Family Law"**

   She further argues to reinterpret the Indian family laws in the light of constitutional moral values and equality. Now it is time for the court to step up to recogneise same-sex marriages under the Special Marriage Act and water down the hetero sexually normative basis of personal laws. It gives a solid doctrinal examination of Approach to ethical social equality and non-discrimination under Articles 14, 15, 21 of the Indian Constitution.[14] The Indian Constitution has not discriminated on ground of community or sexuality.

3. **Kalpana Kannabiran (2018), "Queering the Law: The Battle for Family Rights and Decriminalisation"**

   The article analyses the Navtej Johar judgment and makes a case for immediate reforms in adoption, marriage and surrogacy laws to recognise queer lives. Kannabiran warns this legal recognition would remain 'perennial', not substantial, without structural renascence for dalit lives.[15]

   Guiding and passing judgements for the ignored group without same level of application and acceptance is something which has not received much emphasis in this research gap.

4. **Alok Gupta (2019), "Exploring the Political and Legal Landscape of LGBT Rights in India: Moving Beyond Section 377**

   Gupta evaluates post-decriminalization legal reforms and underscores the lack of momentum in addressing marriage and family rights. He examines international legal models and suggests pathways for integrating marriage equality within the Indian context.[16]

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[13]*Narrain, A. (2020). The Right to Love: The State, Sexuality and the Law in India. Context, Vol. 17, Issue 2, pp. 120-132*

[14]*Jain, D. (2021). Marriage Equality in India: Reading Constitutional Morality into Family Law. Indian Journal of Constitutional Law, Vol. 10, pp. 67-92*

[15]*Kannabiran, K. (2018). Queering the Law: Decriminalization and the Fight for Family Rights. Economic and Political Weekly, Vol. 53, Issue 51, pp. 45-51*

[16]*Gupta, A. (2019). Beyond Section 377: Mapping the Legal and Political Future of LGBT Rights in India. NUJS Law Review, Vol. 12, Issue 1, pp. 1-24*

5. **Rajeev Bhargava (2022), "A Philosophical Perspective on Same-Sex Marriage in India's Constitution"**

   Using constitutional and philosophical arguments, Bhargava argues for marriage equality by posing that same-sex couples are human beings, persons, with rights of personhood which include the freedoms associated to identity and self-esteem. In this he emphasizes the democratic importance of state neutrality with regard to personal morality. The Law is for the entire society, and as the LGBTQA+ community is part of a society then it should be equally treated in all grounds or they can say we need special provisions and legislation to be made like Women, Children and senior citizens undergone. [17]

1.10. Chapter Plan

This study starts with an introduction for which historical and constitutional background of the LGBTQA+ movement in India has been elaborated. Navigation. For example – the development of queer identity, state responses to gender and sexual diversity and recent legal landmarks as the Navtej Singh Johar judgment. The reason for choosing the topic, its legal necessity and the social conditions under which it works are further explained in this chapter especially focusing on Gujarat-issue. The introduction examines the problem from personal, legal and emotional point of view and describes research techniques and purpose, hypotheses importance.

Chapter II of the thesis contains an extensive literature review based on related academic writings, legal articles and doctrinal opinions about the rights of LGBTQA+ people as possible subjects, specifically in the field of marriage and adoption. It then includes a review of some relevant existing works by Indian scholars, including Arvind Narrain and Dipika Jain (2007), Kalpana Kannabiran (2012) and others on the interfaces of sexuality, law and constitutional morality. It also studies how the literature exposes a distance between decriminalization and full legal equality, demanding a family law regime that is truly inclusive. INTRODUCTION REVIEW OF THE LITERATURE The literature review explains the aspects of theoretical claims that the study adopts, as key concepts and debates provide this foundation to the legal analysis.

Its Chapter III majorly dealt with the laws regulating marriage and adoption in India. This piece of work extensively scrutinizes matters of personal law like the Hindu marriage act, the Muslim

[17] *Bhargava, R. (2022). Same-Sex Marriage and the Indian Constitution: A Philosophical Approach. Journal of Indian Law and Society, Vol. 13, Issue 2, pp. 98-115*

personal law and the Special Marriage Act, covering whether these laws apply (or exclude) the presence of same gender couples. It also assesses the manner in which adoption rights are denied to or restricted for LGBTQIA+ persons by studying the Juvenile Justice Act, CARA guidelines and other traffic legal provisions. This chapter also examines the non-recognition of same-sex partnerships in specific laws and its legal implications. This chapter situates the discussion in the state of Gujarat, where we trace how local institutions including family courts, child welfare committees and adoption agencies negotiate (or do not) with cases involving LGBTQA+ persons which reflects existing structural bias.

Let us start with the judicial response to LGBTQA+ rights in India which is being addressed in the Chapter VI. The book provides an incisive critique of these and other significant judgments, examining the legal precedents established by them in depth and sits within a broader context that includes current marriage equality petitions before the High Courts. This chapter analyses what the courts have said regarding constitutional principles of equality, dignity, and privacy: whether these pronouncements have truly resulted in any meaningful transformation of family law. It also shows that the distance between liberal judicial pronouncements and their actual realisation by laws or administrative practice -- especially in the very legal ignorant states like Gujarat where state policy remains untapped.

In its Chapter IV, the thesis takes us to family making of the LGBTQA+ community in Gujarat where regional dimensions of queer families are still battling for concreating their legal relationship or adopting a child. This chapter tells those stories, as reported and witnessed in the field sites from secondary reports and legally published interviews. It has to do with the social shunning, institution-based marginalisation, familial disapprovals and legal-obstacles that a queer person faces from accessing state-welfare, rights to law entailed-justice. It also discusses the media framing and civil society engagement and political leadership silence in Gujarat about queer issues. This chapter humanizes the legal discourse by considering the pain of exclusion through a human rights perspective that rests on affective charges.[18]

Summary of the entire research detailing some other results and inferences arrived. The conclusion connects the legal analysis, literature views and regional viewpoints to show that for LGBTQA+ people, the constitutional promises remains unfulfilled. It demonstrates that even though the law may be decriminalised, in our absence of legal frameworks acknowledging queer families we are left with inequality and continue to be outsiders from society. The chapter

[18]*Rohit Beerapalli, "Same-Sex Marriages in India: A Socio-Legal Analysis" (15 April 2021) https://thelawbrigade.com/.*

emphasizes on the urgent requirement of legislative reform, policy intervention and judicial engagement to ensure marriage and adoption rights for LGBTQA+ community in all provinces of India including Gujarat. It is also a commentary on the inefficacy of the law and administration to even think that queer people deserve basic rights like family life and security.

1.11. Conclusion

Concluding Remarks and Policy Recommendations: This research connects the constitutional promise of equality to the social vulnerabilities of marginalized communities, specifically in the case of LGBTQA+ community. The acceptance and protection of queer identities under family law goes beyond legislative change it is a constitutional obligation emanating from Articles 14, 15, 19 and 21 of the Indian Constitution that guarantees not only equality and non-discrimination but also personal liberty and dignity.

Legal Reform and Inclusivity: Alteration in the Special Marriage Act (1954) / The act presently defines marriage only within the context of heterosexual relationship If we amended the law to acknowledge same-sex / gender diverse relationships in its own right, we would not be denying those individuals recognition to civil marriage. This is consistent with rulings by Indian judiciary, as in the case of Navtej Singh Johar v. Union of India (2018), freedom of sexual orientation and self-respect were recognized by Supreme Court.

Adoption Guidelines: Restriction of adoption to a heteronormative family model Guidelines for the Juvenile Justice Act and CARA (Central Adoption Resource Authority) should be broadened to include LGBTQA+ individuals & couples, adopting in the "best interest of the child", without diluting non-discrimination mandates.

Judicial and Institutional Capacity Building: Training of Judicial Officers, as one can only progress if the eyes that interpret it, perceive in the same wavelength. Workshops for capacity-building can be used as a medium of sensitizing judges for taking a cavalier stance in identifying concrete reliefs within the framework of constitutional morality over social morality (as demonstrated by the Supreme Court of India in Navtej Johar and NALSA v. Union of India, [2014].

Sensitization of adoption agencies: In this, lot depends on the perceptions within them as well as in the society. A robust system of education could challenge these stereotypes and remove decisions from the exercise of prejudice only to be determined solely on child welfare grounds.

Social Integration and Welfare: Recognition in Welfare Schemes: Full equality implies that all family structures of LGBTQA+ partnerships, parenthood and caregiving units are recognized

in all welfare schemes, including housing, health insurance and pensions. Material inequities read here as exclusion.

State Role: Policies should make the country inclusive not just in law and constitution but socio-economically in terms of development as well. Regional and Community-Specific Interventions (A Case of Gujarat).

Awareness Programs: Gujarat must have regional awareness building campaigns to go through cultural sensitivities and community acceptability, focusing on constitutional rights in local languages and idioms.

Training of Local Institutions: Panchayats, local police and municipal officers should be trained to handle LGBTQA+ rights with empathy and legality avoiding discrimination at the grass rooted level.

Legal Aid Cells — Specialised legal aid cells will be established to ensure access to justice at district and taluka levels which will further enable the marginalised people to realise their rights.

Constitutional Vision and Justice: It is held that the emphasis has to be on ensuring and reinforcing constitutional values of freedom, equality and above all for dignity-combining a note of caution with a dream. Justice Chandrachud in Navtej Johar rightly called the Constitution a “living document” which necessarily has to make space for marginalised identities. Indeed, the existence of LGBTQA+ families in our world is a simple reality and recognition under law is not the giving of a plume to them but simply an act that any State functioning within constitutionality must fulfil.

Justice for the LGBTQA+ community does not just mean decriminalising sodomy; it means recognising them as families too under Indian law: that is to say, as non-heteronormative family units built upon relationships of love and care and dignity.

References

- Aarushi Tomar, 'LGBTQ+ Community's Right to Marriage and Adoption: Need for Legislative Reforms' (2017) Indian Journal of Law, Polity & Administration
- Abhijit Iyer-Mitra, Shubhendu Anand, Pradosh Shetty & Ankit Bhuptani, 'Legislation on Same-SEx Marriage and Adoption Rights' (2024) 1(1) Indian Foundation Report 9
- By Aparna Hyanki, "Adoption By Homosexuals: Still Taboo! International Journal of Novel Research and Development (2024) 9(4) 22.
- Deepshree Chauhan & Anshul Agrawal, Security of Live-in Relationship, (2021) 4 International Journal of Law, Management and Humanities 122, 128.
- Divyansh Jain, Adoption Rights of Live-in and Same-Sex Couples (2024) 4(1) INDIAN JOURNAL OF INTEGRATED RESEARCH IN LAW.
- Navantara Ravichandran, 'Legal Recognition of Same-Sex Relationships in India' (2014) Indian Law & Policy
- Ratna Suman, Accommodation of LGBT Rights Post Decriminalisation of Homosexuality in India (2020) 81 Journal of Gender Studies.
- Rohit Beerapalli, 'Same-Sex Marriages in India: A Socio-Legal Analysis' (The Law Brigade Blog post, 15 April 2021).
- Ruth Vanita, "Same-Sex Weddings, Hindu Traditions and Modern India" (2009) 93 Feminist Review.
- Saif Rasul Khan, Same-Sex Relationship and Marriage in India: The Way Forward (Gauhati University, 2019)
- A Step Towards Equality: Adoption and Parenting Rights for LGBTQ+ Individuals in India by Saumya Anand (2024) 3(4) Journal of Research and Juridical Sciences
- Parliament in the Seventieth Year of the Republic of India, The Transgender Persons (Protection of Rights) Act, 2019, p. 79
- YashmeetSehrawat, "India's LGBTQ+ Community: The Right of Adoption" (2023) 2(3) International Journal of Human Rights Law Review.

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